IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.63 OF 2006

The Commissioner of Customs (Import) ..Appellant.

V/s.

Pudumjee Pulp and Paper Mills Ltd. ..Respondent.

Mrs.N.V.Masurkar with Y.S.Bhate for appellant.

Ms.Anjali Chandurkar with Ravi Gondh i/b. Kanga & Co. for respondent.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 28TH FEBRUARY, 2007.

P.C. :-

. Heard the learned counsel for the appellant and the respondents. By this appeal, the learned counsel for the appellant is seeking to raise the following substantial question of law:-

> " Whether the CESTAT was correct in law in giving retrospective effect to the Notification No. 10/2002-2007 dated 12.07.2002 and thereby holding that no licence was required for importation of containers equipped for carriage by one or modes of transport (second hand marine containers) ?

2. Learned counsel for the appellant pointed out that in view of the notification dated 12/7/2002 issued by the Ministry of Commerce and Industries,

there is an amendment to the Code 860900

"**Import licensing notes:**

(I) The Exim entry under ITC (HS) Code No.86090000 in this Chapter shall also include "second hand marine containers" and imports thereof shall be free. "

3. In view thereof, the learned counsel sought to contend that the Tribunal has committed an error in giving retrospective effect to the said amendment and, therefore, the aforesaid question of law is sought to be raised.

4. The learned counsel for the respondents pointed out that during the relevant time the classification of imported items as per the New Import-Export Policy 1992-97 clearly provides as under:-

860900 00	Containers (including containers for transport of fluids) specially designed and equipped for carriage by one or more modes of transport	F

5. In view of the above, the learned counsel for the respondent pointed out that even without the aforesaid amendment, the respondent was entitled to bring the container without any licence.

6. From the CESTAT order, it is very clear that the respondent had imported second hand machinery and the same was carried in two containers and there is also no dispute that the respondent had paid the duty on the second machinery and the container. There is also no dispute that the second hand machinery could not have been brought in without the container.

7. In the aforesaid facts and circumstances and in the light of the said entry 860900 the container was freely importable. Under these circumstances reliance on the notification dated 12/7/2002 is wholly irrelevant and there is no substantial question of law arising in this appeal. Hence appeal is dismissed.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)